Supreme Court, U.S.
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NO. 96-

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

CHARLES R. GARNER,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

On Petition For Writ Of Certiorari To Division I Of
The Court Of Appeals Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

1. May the State of Washington seize a person's vehicle as stolen then force that person to either lose all rights to the vehicle or commit a felony by taking possession of stolen property, all without access to hearings which were denied though mandated by state law?

2. For the purposes of constitutional due process requirements, is a tort claim for conversion an adequate remedy at state law when a state has deprived a person of his property without a required hearing, and the state courts deny the person an opportunity to discover and prove facts relevant to such conversion claim?

3. Do Revised Code of Washington (RCW) §§ 46.12.310(2) and RCW 46.12.320 meet the requirements of procedural due process when the state courts interpret such statutes as only allowing one hearing after seizure, but no hearing before final disposal?

4. Under the United States Constitution, may a state create and interpret laws that require its citizens to commit criminal acts to prevent forfeiture of their property?

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PARTIES TO THE PROCEEDING

The parties to this proceeding are set forth in the caption of this case. The Washington State Patrol is represented by the Washington State Attorney General. Loretta M. Lamb is the Assistant Attorney General who has handled the case for the Respondent up to this point. Otherwise, Petitioner knows of no other party to the proceeding. Garner is represented by Harrison H. deMers and Travis A. Gagnier of deMers & Benson, Inc., P.S. Mr. deMers is the attorney of record in this matter and is admitted to practice before the United States Supreme Court. He was admitted to practice before the court on June 20, 1983. The firm of deMers & Benson has represented Garner since court action was instituted in this case.

BASIS OF JURISDICTION

This petition for review is brought by Charles Garner (hereinafter Garner), the plaintiff in the trial court, the appellant in the Washington State Court of Appeals, and the petitioner in the Washington State Supreme Court. The Washington State Court of Appeals, Division I, affirmed the judgment of the King County Superior Court in an unpublished decision on March 25, 1996. Garner timely petitioned the Washington State Supreme Court for a writ of certiorari. The Washington Supreme Court denied review of the case on September 3, 1996.

The jurisdiction of the United States Supreme Court is based on 28 U.S.C. §1257(a) and on the Constitution of the United State, Article 3, §1 and §2. This case involves issues arising under the Constitution of the United States,

specifically, the Fourteenth Amendment to the United States Constitution. A complete copy of the Fourteenth Amendment to the United States Constitution is attached as the first item in the Appendix.

STATEMENT OF FACTS

Procedural Facts.

Garner alleged a violation of his Washington State and United States Constitutional rights in his complaint and these issues were passed upon by the state Superior Court and the state Court of Appeals. In the Superior Court, Garner raised these issues in his complaint. CP 3–6. The allegations in the complaint, substantiated by specific facts therein, constitute a claim under 42 U.S.C. §1983. The violations of Garner's civil rights were first raised in the trial court. The Superior Court found that the statute of limitations had run on the civil rights claims. The case was decided at the trial court via the State's motion for summary judgment.

It should be noted, although not necessarily important to this court's decision about whether or not to grant a writ of certiorari, that in order for the Superior Court to find that the statute of limitation had run on the first hearing, the court would have had to find that a reasonable time had elapsed in which the WSP could conduct an investigation. What a "reasonable time" is to complete an investigation is an issue of fact. Issues of fact cannot be determined via summary judgment under the laws of the State of Washington. Thus, the ruling of the Superior Court and its subsequent affirmation by the Court

of Appeals was clearly erroneous.

The constitutional issues were again raised by Garner in the Court of Appeals in his opening brief. The Court of Appeals affirmed the trial court's determination that the statute of limitations had run on the claims. This affirmation was due to the Court of Appeals erroneously interpreting RCW 46.12.310(2) and RCW 46.12.320 which call for two separate hearings. Ct. of Appeals Decision pgs. 8–9. The first hearing is to be given after the initial seizure. The second hearing is to be given 60 days before disposal of the vehicle. Complete copies of RCW 46.12.310(2) and RCW 46.12.320 are attached hereto in as the second and third items in the Appendix. Garner contends that the state courts' interpretation of these statutes is unconstitutional. All opinions and decisions issued by the Washington State Courts are incorporated into the Appendix, beginning with the Superior Court Decision which is item six in the Appendix.

Garner briefed the constitutional issues in the case in his petition for review by the Supreme Court of Washington. The Supreme Court of Washington denied review.

Substantive Facts.

On September 15, 1989, Plaintiff, Charles Garner, presented a 1984 Chevrolet pickup to the Washington State Patrol for an inspection and title transfer. The vehicle was purchased in Arizona through the Richie Brothers Auction. After inspecting the vehicle, Trooper Fry of the Washington State Patrol, (hereinafter "WSP") advised Mr.

Garner that the vehicle was stolen. The vehicle frame VIN number matched the VIN number on the dash, which matched the VIN number on the title. However, the VIN plate on the dash appeared to have been altered, and there were several other areas of suspicion. Trooper Fry stated the vehicle was stolen and impounded it. CP 232, 235.

When the WSP refused to return Mr. Garner's vehicle he employed an attorney who on October 12, 1989, sent a written demand for a hearing pursuant to RCW 46.12.310. CP 90. On October 13, 1989, Trooper Fry notified Mr. Garner that a bond was required to release the vehicle. CP 68. Mr. Garner determined that while a bond was perhaps required in order to license a vehicle, no such bond was required for the return of the vehicle to the owner. CP 69.

Captain Richard Carr of the WSP by letter of December 7, 1989 advised Mr. Garner that there was no provision for a hearing and that a bond would be required to pick up the vehicle. CP 99. On January 10, 1990, Capt. Carr again wrote to Mr. Garner stating there was no requirement for a hearing and that a bond was required. CP 106. On February 10, 1990, Captain Carr wrote and finally agreed the vehicle could be released without a bond. CP 111. However, the State did not withdraw its allegation that the vehicle was stolen. Seventeen days later Capt. Carr wrote stating:

> I, am therefore forwarding the case file on this matter to the Attorney General's office, who will be contacting you regarding this matter.

CP 116. After waiting for months, Mr. Garner contacted the AG's Office and was told by assistant AG Jonathan McCoy that he could not pick up his vehicle without a bond. CP 71.

On October 11, 1991, Mr. Garner was advised by Chip Holcomb that the WSP "has completed its investigation of your vehicle" and was given until October 28, 1991 for its removal. CP 125. This was the first notice Mr. Garner received that the state had completed its investigation into the allegation that the vehicle was stolen. Mr. Garner was never advised as to the results of this investigation. The state never withdrew its allegation that the vehicle was stolen. Mr. Holcomb further stated in his letter of October 11, 1991 that "a bond may be required...". CP 125.

Mr. Garner knew the statute said the state could not dispose of his vehicle without giving him a hearing, and he believed that before any actions toward disposing the vehicle were taken, the state would have to grant him the hearing required under the statute. CP 236.

Mr. Garner felt that he would be subject to criminal prosecution for possession of stolen property if he picked up the vehicle. CP 234. This is because the WSP had told him that the vehicle was stolen and refused to grant a hearing to determine if the vehicle was in fact stolen as the WSP alleged. Therefore, Mr. Garner did not pick up the vehicle. On one occasion, Mr. Holcomb told Mr. Garner that someday a smart WSP Trooper might stop him and notice that the VIN Number was altered and seize the vehicle on the spot. CP 128, 70.

Mr. Garner believed he would be able to obtain a determination at a hearing as to whether the vehicle was or was not stolen; and, if it was determined that the vehicle was not stolen, then the cloud on the title to the vehicle would be cleared. CP 235. The state's refusal to grant Mr. Garner the hearings required under RCW 46.12.310(2) and 46.12.320 directly resulted in preventing the true ownership status of the vehicle from being established, thereby subjecting Mr. Garner to possible criminal prosecution should he pick up the vehicle.

ARGUMENT

Individuals cannot be deprived of life, liberty or property without due process of law. U.S. CONST. amend. XIV. The Fourteenth Amendment guarantees procedural due process in order to protect individuals from arbitrary government action that erroneously or unjustly deprives them of life, liberty or property. *Carey v. Piphus*, 435 U.S. 247, 259, 262, 55 L. Ed. 2d 252, 98 S.Ct. 1042 (1978). In order to determine if an individual's due process rights have been violated, a two–step analysis is employed. First, it must be determined whether a protected interest, i.e. life, liberty, or property, is at stake. *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S. Ct. 2701, 2705, 33 L. Ed. 2d 548 (1972); *Hewitt v. Grabicki*, 794 F.2d 1373, 1380 (9th Cir. 1986). If a protected interest is at stake, then a balancing test is applied to determine what process is due. *Id.*

The state may not constitutionally put a cloud on the title to a person's property by alleging the vehicle was stolen, refuse to give a required hearing to clarify the legal status of the subject property, and then compel a person to take possession of the property knowing the state had said it was stolen.

Property interests for purposes of application of the due process protections are many and varied. The protection of the Fourteenth Amendment is not limited to undisputed ownership, but extends broadly to "any significant property interest". *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed.2d 113 (1971). In this case, Mr. Garner clearly had a property interest in the vehicle that was impounded by the WSP. He had purchased the vehicle for value and, thus, was entitled to all the property interests therein. CP 65. These interests include the right to sell the vehicle and to enjoy and use the vehicle.

The United States Supreme Court recognized that placing a cloud on the title to property significantly affects the property interests of the owner. *Connecticut v. Doehr*, 501 U.S. 1, 11, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991). By labelling the vehicle stolen, the State made the vehicle unmarketable and disabled Mr. Garner from enjoying and using the vehicle. The vehicle was unmarketable because no one would insure or purchase a vehicle which has been labelled stolen. The lack of insurability also would restrict Mr. Garner's use of the vehicle since Washington has a mandatory vehicle insurance law. Mr. Garner also could not use or enjoy the vehicle because he was under the constant threat of being arrested for possession of stolen

property, a crime, because the State refused to grant a hearing which would clarify whether or not the vehicle was stolen. RCW 46.12.300, RCW 9A.56.150,160. A copy of these statutes is attached as Item 5 in the Appendix.

Thus, the State, acting through the Washington State Patrol, placed a cloud on the title of Mr. Garner's vehicle when it seized the property and labelled it stolen. While the seizure was originally proper, the statements that the vehicle was stolen and the State's refusal to grant a hearing constituted a taking of Mr. Garner's property interests in the vehicle. Because the State seized Mr. Garner's vehicle, the State had a constitutional duty to grant Mr. Garner a hearing to clarify whether or not the vehicle was indeed stolen. By refusing to grant the hearing the State of Washington deprived Mr. Garner of his vehicle without due process of law as required by the Constitution of the Untied States.

As interpreted by the courts of the State of Washington RCW 46.12.310(2) and RCW 46.12.320 do not provide for constitutionally adequate post-deprivation process.

a. Mr. Garner was entitled to two hearings, one immediately after seizure of vehicle and one 60 days before forfeiture of the vehicle.

As set forth above, Mr. Garner clearly had property interests in his vehicle. The State seized the vehicle and later disposed of it. In order to determine what process was due Mr. Garner, the balancing test articulated in *Mathews v. Eldridge* must be applied. 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 18 (1976). The three factors to be

considered are as follows: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Id.*

As to the first factor of the *Mathews* test, the private interest of Mr. Garner was to have the use and enjoyment of his vehicle free from the cloud of title placed on it by the implications of the WSP that it was stolen. CP 118, 236. Mr. Garner was deprived of the use of his vehicle for several years, and eventually lost the vehicle itself when the State disposed of it without giving a hearing. Thus, Mr. Garner had two distinct interests. First, he was entitled to the use, enjoyment, and ability to sell his vehicle; and second, he was entitled to ownership and retention of the vehicle.

As to the second factor of the *Mathews* test, the risk of an erroneous deprivation of Mr. Garner's property through the procedure used by the State is clear and unequivocal. The procedures used by the State: (1) denying Mr. Garner his statutorily mandated hearing, (2) refusing to advise him of or give him a copy of their investigative report on the alleged theft of the vehicle, (3) continuing to improperly demand a bond, and (4) demanding that Mr. Garner pick up his vehicle, without clarifying whether or not the vehicle was stolen, resulted in Mr. Garner losing his vehicle. The state's refusal to give Mr. Garner a copy of the investigation report, or to let him know the results or progress of the investigation, raises serious questions as to

the risk of an erroneous deprivation in this case. The Supreme Court stated the following about this issue:

> [F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . . . [And] no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it.

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170–72 (1951)(Frankfurter, J., concurring).

As to the third factor of the *Mathews* test, the interest of the State is to protect the public from car theft by refusing to license stolen vehicles and to carry out its purposes at as low a cost as possible. The real issue is how much time and effort will be spent protecting the rights of individuals. This is a question of cost and efficiency; while worthy goals indeed, the due process rights of the individual will usually outweigh the ordinary cost of hearings. *Fuentes v. Shevin*, 407 U.S. 67, 92 n. 22, 92 S.Ct. 1983, 2000 n. 22, 32 L.Ed 2d 556 (1972). This goes to the purpose of procedural due process. It is "intended to protect the particular interests of the person whose possessions are about to be taken." *Id.* Furthermore, the Washington State Legislature has spoken to this issue by enacting statutes that call for the process that is due Mr. Garner. Only through the erroneous interpretations of the Washington State Courts have the statutes been rendered unconstitutional. What the WSP did here, and the state courts approved, is deprive a citizen of property without

due process of law for the sake of expediency and to save time and money.

Mr. Garner has strong and important interests to protect in his property. While some cases of alleged theft may be easily solved by doing a stolen vehicle report search, many will end up like Mr. Garner's--without any clear evidence of a crime or any unequivocal evidence that a crime has not been committed. These factors increase the risk of error. The hearings called for by the statutes would add another tool to enable the WSP to reach a conclusion about the legal status of a vehicle. The problems inherent in ascertaining the legal status of a vehicle are further exacerbated by the WSP's apparent inability to investigate quickly.

The State's interest is to keep costs down. On balance, the three factors articulated in *Mathews* lead to the conclusion that the State should be required to give an evidentiary hearing after seizing the vehicle and should be required to give an evidentiary hearing before it disposes of the vehicle. Anything short of these two hearings would be an unconstitutional violation of Mr. Garner's due process rights.

b. Procedures provided by the Washington State Legislature.

The Washington State Legislature provided for these two hearings in RCW 46.12.310(2) and RCW 46.12.320. The hearing required by RCW 46.12.310(2) is conducted to determine who is entitled to possession of the vehicle that has been seized. This hearing is required after the WSP

has completed it investigation, after seizing a vehicle, to give the purported owner an opportunity to explain the irregularities regarding vehicle numbers contended by the WSP. At the time of this hearing, required by RCW 46.12.310(2), the purported owner has only been deprived of the use and enjoyment of the property, not all right, title and interest in the property.

The hearing mandated by the second statute, RCW 46.12.320, is to be held before the vehicle is disposed of by the WSP. Unlike the hearing required by RCW 46.12.310(2) where immediate possession of the vehicle is determined, the hearing required by RCW 46.12.320 is to determine whether the owner should be divested of all rights in the vehicle. These two statutes, which call for two different hearings, were designed to take into account the materially different rights that are affected by each state act. The Washington Supreme Court expressed its recognition of the difference between the affected rights when it stated the following:

> Initially, it should be noted that a "seizure" for the purpose of forfeiture and actual "forfeiture" involve two different concepts. The first entails a taking and holding of property, whereas the second effects an actual dissolution of the owner's rights in the property.

City of Everett v. Slade, 83 Wash.2d 80, 82, 515 P.2d 1295, 1297 (1973). Thus, the first hearing is to determine whether a prima facie case exists to hold and conduct further investigation of the property. The second hearing is

to determine whether the State in fact has a case that shows Mr. Garner should be deprived of all his interests in the vehicle.

If the Court of Appeals and the Superior Court had interpreted the statutes properly, the statute of limitations defense would have failed for the State. The first hearing would have been due after a reasonable investigation by the WSP and the second hearing would have been due 60 days before disposal of the vehicle. Both hearings, and the lack thereof, would have been well within the three-year statute of limitations.

c. The Washington State Courts' interpretation of the legislatively mandated procedures.

The Court of Appeals seemed to feel that in as much as the ***procedure*** for both hearings was governed by one statute, RCW 46.12.330, that only one hearing was required. Ct. of Appeals Decision at 9. The right to each hearing is given by the substantive statutes RCW 46.12.310 and RCW 46.12.320. RCW 46.12.330 both allows hearings, and tells how each hearing is to be conducted.

In *Fuentes v. Shevin*, one of the plaintiffs had purchased a stove and stereo on credit advanced by Firestone. 407 U.S. 67, 92 n. 22, 92 S.Ct. 1983, 2000 n. 22, 32 L.Ed 2d 556 (1972). The total cost of these items was $500. A dispute arose over the service contract which was sold along with the stove. Ms. Fuentes refused to make further payments. In the State of Florida at that time, all the creditor needed to do in order to repossess financed goods was fill out a form at the small-claims court and get

it stamped by the clerk. The clerk then issued a writ of replevin and the sheriff went out and repossessed the goods. The sheriff was to hold the goods for three days, in which time the debtor could post a bond of twice the value of the goods in order to get the goods back.

The Supreme Court reiterated its established position that even a temporary deprivation by the State is a deprivation for the purpose of procedural due process. *Fuentes* at 84–85 (citing *Sniadach v. Family Finance Corp.*, 395 U.S. 337; *Bell v. Burson*, 402 U.S. 535). The Court also points out that the ability of the debtor to reclaim the goods does not change the procedural due process ramifications because the debtor would simply be substituting one form of property (money) for the originally seized property (in the Fuentes case, a stove and stereo). *Id.*

In Mr. Garner's case, not only did he have to post a bond, but also, Mr. Garner was then told by the State that he would be required to commit a crime--possession of stolen property--before he could get his vehicle back. For most of the period of time the State had the vehicle in its possession, the State's took the position that a bond would be required in order to reclaim the vehicle. Thus, like *Fuentes*, the fact that Mr. Garner may have been able to reclaim by posting a bond does not eviscerate his right to hearings. Significantly, in Mr. Garner's case the statutes did not require a bond for the return of the vehicle, only for its registration. It should also be noted that Mr. Garner has much more in terms of dollar value at stake in his case than did Ms. Fuentes in the case decided by the Supreme Court. Therefore, Mr. Garner was deprived of his property

without due process of law.

Despite the Legislature's obvious attempt to draft statutes in compliance with the requirements of procedural due process, the WSP and Attorney General would not grant Mr. Garner even one hearing, let alone the two required. Clearly, Mr. Garner's right to the second hearing arose when the State decided to dispose of his vehicle. Mr. Garner's right to the first hearing arose after the WSP had sufficient time to conduct a reasonable investigation. The completion of this investigation was first made known to Mr. Garner in the Attorney General's letter of October, 1991. Therefore, both hearing dates were well within the statute of limitations.

d. The Washington State Courts' interpretation of the statutes results in constitutionally deficient process.

The Washington State Court of Appeals erred when it stated that two hearings were not required. Ct. of Appeals Decision at 9. Mr. Garner was constitutionally entitled to both hearings before the State could dispose of his vehicle. Mr. Garner was never given a hearing; yet, his vehicle was seized, held for several years under the bond requirement, had a cloud of title put on it by the State, and was subsequently sold by the State.

A state court claim for conversion is not an adequate remedy at law when the person whose rights were deprived is not given the chance to discover and prove facts relevant to the case and where the state courts' interpretation of the statutes at issue have rendered them unconstitutional.

a. Mr. Garner is entitled to relief from the Federal Courts for the unconstitutional deprivation of his property.

Mr. Garner had the right, as Mr. Doehr did in *Connecticut v. Doehr*, to petition the Federal Courts for relief directly, without resort to state procedures and tort law. 501 U.S. 1, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991). The fact that Mr. Garner attempted to pursue his remedies in state administrative and court proceedings should not prevent him from obtaining relief from the Federal Courts when, as here, the procedures used by the state, and validated by the state courts, are unconstitutional under the Fourteenth Amendment to the United States Constitution. Mr. Garner did not anticipate that the courts of the State of Washington would decline to enforce and follow its own laws and the Fourteenth Amendment.

In *Doehr*, Mr. Digiovanni, petitioner, had obtained a pre-judgment lien on the Doehr's home without posting a bond and with only a skeletal affidavit. *Connecticut v. Doehr*, 501 U.S. 1, 11, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991). The lien was meant to ensure that property was available should Digiovanni win his assault tort claim against Doehr. Doehr was entitled, under state law, to a hearing immediately following Digiovanni's attachment of Doehr's home. Doehr instead filed a case in the United

State District Court challenging the constitutionality of Connecticut's pre-judgment attachment statute. *Id.* In applying the *Mathews* test, the Court agreed that the attachment amounted to a deprivation under the Due Process clause of the United States Constitution. *Id.* at 11.

In the case at bar, Mr. Garner's vehicle was taken without a pre-deprivation hearing. Mr. Garner has never disputed that the state had a right to seize the vehicle and conduct a reasonable investigation; however, the state had an obligation after alleging that the vehicle was stolen, to at the very least clarify the legal status of the vehicle. The state refused to even grant Mr. Garner the statutorily required second hearing to determine whether Mr. Garner should be deprived of all his rights in the vehicle. As set forth above, the state courts' validation of the acts of the state results in an interpretation of the statutes governing seizures and forfeitures of vehicles of citizen of the State of Washington which is unconstitutional.

In *Doehr*, Mr. Doehr was entitled under state law to a post-deprivation hearing, but chose to file a claim in the District Court instead. *Id.* Mr. Garner attempted to use the state procedure to get a hearing to clarify the ownership status of his vehicle and was denied. Mr. Garner thus exercised more diligence in pursuing his state remedies than Mr. Doehr did. The deprivation of Mr. Doehr's property, via the attachment lien, is less than the deprivation suffered by Mr. Garner in the long-term seizure and eventual disposal of his property by the state. Therefore, to a greater degree than even Mr. Doehr, Mr. Garner was entitled to hearings to clarify the status of his vehicle and to file an immediate claim in District Court to

remedy the matter. Mr. Garner's attempt to pursue his administrative and state court remedies along with his state-law tort remedies should not deprive him of his chance to rectify the egregious violation of his due process rights at the hands of the State of Washington.

b. The rule of *Parratt* and its progeny does not prevent the acts and statutes of the State of Washington from being unconstitutional, nor prevent Mr. Garner from getting a remedy in the Federal Court for the wrongs committed upon him by the State.

The Supreme Court in *Parratt, et al., v. Taylor* held that even though a person is deprived of property under color of state law, such deprivation is not sufficient to constitute an unconstitutional violation of the due process clause if (1) such deprivation was due to the unpredictable and unauthorized act of a state actor; (2) there is no set state law or procedure that mandates the type of treatment that the individual received at the hands of the state actor; and (3) the individual who was deprived of property has an adequate remedy at state law. 451 U.S. 527, 543–44, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) *overruled on other grounds, Daniel v. Williams,* 474 U.S. 327, 330–33 (1986). All three conditions must be met if the *Parratt* rule is to apply. *Zinermon v. Burch*, 494 U.S. 113 (1990). *Parratt* involved a negligent taking of a prisoner's hobby material by a prison official. *Hudson v. Palmer* broadened the rule set down in *Parratt* to include intentional deprivations as well. 468 U.S. 517, 530–33, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984).

Mr. Garner's case does not fall within the rule of *Parratt* because none of the three conditions to the rules operation are present in this case. First, the deprivation of Mr. Garner's vehicle was not due to the unauthorized and unpredictable acts of a state agent. Mr. Garner spoke with no less than three individuals representing the state. Trooper Fry said the vehicle was stolen and that Mr. Garner would have to post a bond in order get the vehicle back. Captain Carr reiterated the bond requirement, told Mr. Garner to pick up the "stolen" vehicle while refusing to clarify the ownership status of the vehicle, and told Mr. Garner that no hearing was allowed. Attorney General Holcomb also demanded a bond, and reiterated that Mr. Garner was not entitled to a hearing. While Trooper Fry's actions may arguably have been unauthorized or unpredictable, it is incredible to assert that all three, working in unison, stating the same process repeatedly, could be held to be unpredictable. Furthermore, as Mr. Garner went up the line of authority from the Trooper to the Captain to the Attorney General, the story remained the same. Thus, this was an authorized course of action.

Secondly, there is an established state procedure, set forth by the legislature for seizing and forfeiting vehicles. RCW 46.12.210(2) and RCW 46.12.320. The courts have interpreted these statutes as authorizing the actions of the WSP and the Attorney General. This further demonstrates that the acts of the state agents were authorized, and also shows that the state agents acted pursuant to an established, albeit unconstitutional, procedure as they interpreted the statute. The Court's subsequent validation of the acts of the state agents shows that the statutes do not provide the process duly required under the United States Constitution.

Thirdly, Mr. Garner's remedy in state court was hobbled by the State's refusal to comply with discovery requests of Mr. Garner and by the Court's refusal to allow reconsideration of its original summary judgment to allow for such discovery. Mr. Garner's case was further compromised by the refusal of the state to allow the hearings called for by statute.

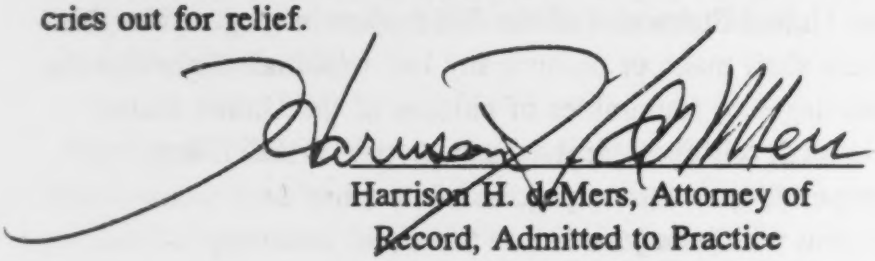
CONCLUSION

The State has committed serious and continuing wrongs against Mr. Garner. They stonewalled his good faith efforts to establish his rightful ownership of the vehicle. The State seized the vehicle and claimed it was stolen. Mr. Garner knew it was a crime to possess stolen property, so he asked for clarification. Instead, he was first told to post a bond, and then he was told to pick up the vehicle, but without a withdrawal of the State's allegation that the vehicle was stolen, thereby subjection himself to arrest and incarceration and possible criminal prosecution. Perhaps most egregious of the wrongs committed against Mr. Garner was the State's steadfast refusal to grant the constitutionally required hearings which were provided for by statute. These hearings would have provided the forum to clear up all the issues and to obtain an order with which he could have taken possession of his vehicle free of clouded title concerns and without fear of criminal prosecution.

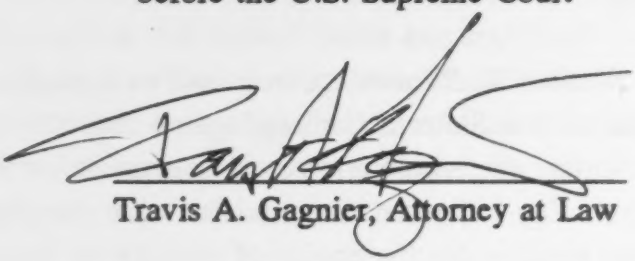
Due process rights are of the utmost constitutional importance. The Supreme Court has long guarded citizens against the unchecked action of the state. Procedural due process rights are to protect citizens from the type of

arbitrary treatment by the state that Mr. Garner received.

We have here a blatant violation of the due process clause of the United States Constitution and the law of the State of Washington legislated to conform to the due process clause. If the State of Washington is allowed to deny a hearing or hearings, as was done here to Mr. Garner, then it is highly likely that the State of Washington will continue to do so to avoid the time and expense of such hearings. Such a trampling on the rights of citizens cries out for relief.



Harrison H. deMers, Attorney of Record, Admitted to Practice before the U.S. Supreme Court



Travis A. Gagnier, Attorney at Law

ITEM 1

AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of the article.

ITEM 2

46.12.310. Serial or other identification numbers on vehicles, watercraft, campers, or parts--Seizure and impoundment--Notice to interested persons--Release to owner, etc.

(1) Any vehicle, watercraft, camper, or any component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, there being reasonable grounds to believe that such was done for the purpose of concealing or misrepresenting identity, shall be impounded and held by the seizing law enforcement agency for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it had been reported stolen.

(2) Within five days of the impounding of any vehicle, watercraft, camper, or component part thereof, the law enforcement agency seizing the article or articles shall send written notice of such impoundment by certified mail to all persons known to the agency as claiming an interest in the article or articles. The seizing agency shall exercise reasonable diligence in ascertaining the names and addresses of those persons claiming an interest in the article or articles. Such notice shall advise the person of the fact of seizure, the possible disposition of the article or articles, the requirement of filing a written claim requesting notification of potential disposition, and the right of the person to request a hearing to establish a claim of

ownership. Within five days of receiving notice of other persons claiming an interest in the article or articles, the seizing agency shall send a like notice to each such person.

(3) If reported as stolen, the seizing law enforcement agency shall promptly release such vehicle, watercraft, camper, or part thereof as have been stolen, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the possession of the article or articles. Enacted by Laws 1975–76, 2nd Ex.Sess., ch. 91. § 2, eff. July 1, 1976.

ITEM 3

46.12.320. Serial or other identification numbers of vehicles, watercraft, campers, or parts--Disposition of vehicles, etc., authorized, when

Unless a claim of ownership to the article or articles is established pursuant to RCW 46.12.330, the law enforcement agency seizing the vehicle, watercraft, camper, or component part thereof may dispose of them by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the agency, when:

(1) The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

(2) After the true identity of the article or articles has

been established, the seizing law enforcement agency cannot locate the person who is the lawful owner or if such lawful owner or his successor in interest fails to claim the article or articles within forty-five days after receiving notice from the seizing law enforcement agency that the article or articles is in its possession.

No disposition of the article or articles pursuant to this section shall be undertaken until at least sixty days have elapsed from the date of seizure and written notice of the right to a hearing to establish a claim of ownership pursuant to RCW 46.12.330 and of the potential disposition of the article or articles shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who, prior to the final disposition of the article, has notified the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof.
Enacted by Laws 1975-76, 2nd Ex.Sess., ch. 91, § 3, eff. July 1, 1976.

ITEM 4

46.12.330. Serial or other identification numbers of vehicles, watercraft, campers or parts--Hearing--Appeal--Removal to court--Release

(1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle, watercraft, camper, or component part thereof seized pursuant to this section.

(2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW.

(3) Such hearing shall be held within a reasonable time after receipt of a request therefor. Reasonable investigative activities, including efforts to establish the identity of the article or articles and the identity of the person entitled to the lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time within which a hearing must be held.

(4) The hearing and any appeal therefrom shall be conducted in accordance with Title 34 RCW.

(5) The burden of producing evidence shall be upon the person claiming to be the lawful owner or to have the lawful right of possession to the article or articles.

(6) Any person claiming ownership or right to possession of an article or articles subject to disposition under RCW 46.12.310 through 46.12.340 may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is two hundred dollars or more. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to judgment for costs and reasonable attorney's fees. For purposes of this section the seizing law enforcement agency shall not be considered a claimant.

(7) The seizing law enforcement agency shall promptly release the article or articles to the claimant upon a

determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof.
Enacted by Laws 1975–76, 2nd Ex.Sess., ch. 91, § 4, eff. July 1, 1976. Amended by Laws 1981, ch. 67 § 27, eff. July 1, 1982.

ITEM 5

9A.56.150. Possessing stolen property in the first degree --Other than firearm

(1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property other than a firearm as defined in RCW 9.41.010 which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony.

Amended by Laws 1995, ch. 129, § 14 (Initiative Measure No. 159).

1995 Legislation

Laws 1995, ch. 129, § 14 in subsec. (1), inserted "or she" and "other than a fire-arm as defined in RCW 9.41.010".

9A. 56.160. Possessing stolen property in the second degree--Other than firearm

(1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possess stolen property other than a firearm as defined in RCW 9.41.010 which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value; or

(b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He or she possess a stolen access device; or

(d) He or she possesses a stolen motor vehicle of a value less than one thousand five hundred dollars.

(2) Possessing stolen property in the second degree is a class C felony.

Amended by Laws 1994, 1st Sp.Sess., ch. 7, § 434, eff. July 1, 1994; Laws 1995, ch. 129, § 15 (Initiative Measure No. 159).

ITEM 6

IN THE SUPERIOR COURT
FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

CHARLES R. GARNER,	)
	) No. 93-2-26537-9
Plaintiff,	)
	) COURT'S DECISION
vs.	) ON DEFENDANT'S
	) MOTION FOR SUMMARY
STATE OF WASHINGTON,	) JUDGMENT
	)
Defendant.	) AMENDED
	)

ORDER on Motion to Strike:

Defendant's motions to strike are granted and denied as follows:

1. A portion of paragraph three of plaintiff's statement of facts: Granted.

2. A portion of paragraph ten of plaintiff's statement of facts: Denied.

3. A portion of paragraph eleven: Granted.

4. A portion of paragraph twelve: Denied.

5. A portion of paragraph thirteen: Denied.

ORDERED on Summary Judgment:

The Court finds as a matter of law that there was no wrongful conversion of plaintiff's truck when, after notice to plaintiff, that W.S.P. had the vehicle removed by a registered disposer.

Plaintiff had ample opportunity to pick up his vehicle with or without licensing it. He chose not to pick it up at his peril.

Other issue the court considered:

(1) Were plaintiff's claims barred by the statute of limitations?

(a) The claim of failure to provide a hearing was barred.

(b) Plaintiff did not take issue with the right of the Patrol to originally impound the vehicle. The claim of conversion was not barred since the actual acts resulting in the vehicle being removed occurred within the statute of limitations.

(2) Did the plaintiff fail to exhaust his administrative remedies?

(a) Yes – as to the failure to give a hearing.

(b) No – as to a claim of conversion.

(3) Is the State immune as to plaintiff's claims under RCW 46.01.310 – No.

The Attorney General characterizes RCW 46.01.310

as follows: it "provides that any government officers acting pursuant to Statutory provision related to licensing and registration of vehicles are immune from suit for the performance of their duties." The court has studied the specific section and the chapter to determine its scope. It appears to the court that the immunity is intended to operate in favor of the individuals and agencies (including the WSP) performing duties as an agent or an agent of an agent of the Director of the Department of Licensing. The statute does not appear to give the Director immunity, nor the State. Defendant's Summary Judgment for Dismissal is granted.

DATED: April 24 , 1995

/s/ Judge Faith Ireland
JUDGE FAITH IRELAND

ITEM 7

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

CHARLES R. GARNER,	)	
	)	No. 93-2-26537-9
Plaintiff,	)	
	)	ORDER ON CIVIL
vs.	)	MOTION
	)	
STATE OF WASHINGTON,	)	
	)	
Defendant.	)	
_____	)	

The above-entitled Court, having heard a motion for reconsideration

IT IS HEREBY ORDERED the motion is denied.

DATED: May 4, 1995.

/s/ Faith Ireland

JUDGE

Presented by:

_____

Order On Civil Motion (ORM) SC Form J)-103
3/86

ITEM 8

A majority of the panel having determined that this opinion should not be printed in the Washington Appellate Reports but will be filed for Public record pursuant to RCW 2.06.040. IT IS SO ORDERED.

/s/ WILLIAM W. BAKER
CHIEF JUDGE

FILE
IN CLERK'S OFFICE
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I
Date MAR 25 1996
/s/ William W. Baker
CHIEF JUDGE

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)
	)
Plaintiff,	) No. 36661-1-I
	)
v.	)
	)
CHARLES R. GARNER	)
	)
Appellant.	) FILED: Mar 25 1996

PER CURIAM. Charles Garner appeals from the dismissal on summary judgment of his claims against the State of Washington for conversion and for violation of his due process rights. A commissioner referred the appeal to a panel of judges for accelerated review pursuant to RAP 18.12. Because there are no genuine issues of material fact as to whether the State lawfully disposed of Garner's

vehicle and as to whether Garner's due process claim accrued more that 3 years prior to the filing of this action, we affirm the summary judgment.

Viewed in the light most favorable to Garner, the materials before the trial court establish the following sequence of events. In March 1989, Garner purchased a 1984 pickup truck from an employee of an auction house in Arizona. on September 15, 1989, he presented the truck for inspection by the Washington State Patrol in order to obtain a Washington State title and vehicle license.

During the inspection, Washington State Patrol Trooper Lance Fry informed Garner that the truck was stolen. According to Trooper Fry, the inspection later revealed, among other things, that the Vehicle Identification Number (VIN) on the dashboard was slightly bent and lightly painted over, the rivets holding the VIN did not appear to be factory installed, the engine number appeared to be altered, the transmission number could not be located, and the doors and vehicle bed had at one time been painted a different color.

Based on the inspection, Trooper Fry seized the vehicle for further investigation pursuant to RCW 46.12.310(1).[1] Garner signed a release form,

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[1] RCW 46.12.310(1) provides in pertinent part: "Any vehicle . . . from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, there being reasonable grounds to believe that such was done for the purpose of concealing . . . identity, shall be impounded and held by the seizing law enforcement agency for the purpose of conducting an investigation to determine the identity of the article . . . and to determine whether it had been reported stolen."

acknowledging that he had voluntarily released the vehicle to the WSP for the purpose of identification and that the vehicle was subject to disposal if it turned out to be stolen.

On October 12, 1989, Garner sent a letter to the Washington State Patrol requesting an administrative hearing to establish his claim of ownership pursuant to RCW 46.12.330.[2] On October 13, 1989, Trooper Fry notified Garner that the Department of Licensing required a bond to release the truck. Garner repeated his request for a hearing by letter dated November 21, 1989.

By letter dated December 7, 1989, Captain Richard Carr of the Washington State Patrol informed Garner that the frame number on the truck matched the Montana title, but that the engine number, transmission number, and Federal Safety Standard stickers were missing. Captain Carr also referred Garner to RCW 46.12.151, which permits the Department of Licensing to register the vehicle, but condition issuance of a certificate of ownership on documents "reasonably sufficient to satisfy the department" or a bond. Captain Carr also asserted that "[t]he RCW has no provision for a hearing."

On January 10, 1990, Captain Carr informed Garner that he had reviewed the case and found "there is no requirement for a hearing." Carr stated that because of the uncertain identity of the vehicle, a bond was required to obtain registration or a title.

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[2] Garner also informed the WSP that the prior owner had placed an older model cab on the vehicle after it had been in an accident and had removed the older VIN and replaced it with the 1984 VIN.

On February 14, 1990, Captain Carr again wrote to Garner, informing him that he would be unable to obtain title or registration for the truck until he posted a bond. Garner was further advised that "[b]onding is not a requirement of release . . ." Carr also stated that Garner had been notified twice to arrange for release of the truck and provided the telephone number of a trooper for Garner to call to arrange release of the truck. In March 1990, Garner was advised that because he refused to agree with or conform to the Department of Licensing's regulations, the matter was being forwarded to the Attorney General's Office.

On April 14, 1991, Captain Carr again wrote to Garner. Carr explained that the truck had been seized "based on information that it was a stolen vehicle," but that the WSP had been unable to locate "the victim of that theft." Garner was informed that "s the sole claimant to the vehicle, it may be released to you." Garner was also advised that unless he made arrangements to remove the truck by May 15, 1991, Chip Holcomb from the Attorney General's Office informed Garner that the Department of Licensing would issue a registration certificate, but that a bond "may be required" because of the uncertainty regarding the transfer of the identification number. Holcomb further advised:

> As you have been further advised, the patrol cannot store your vehicle indefinitely. In your letter dated May 1, 1991, you raise a number of perceived inconsistencies in prior communications, apparently focusing on the word "stored." However you describe it, the situation is the same. The Patrol has

> completed its investigation of your vehicle and you should arrange for its removal by a registered disposer who will undoubtedly begin to assess storage charges.

Nothing in the record suggests that Garner ever attempted to regain possession of the truck. On October 29, 1991, the truck was turned over to a towing company, which eventually disposed of the vehicle. Garner claims that after he was informed in writing by Captain Carr to the contrary, Chip Holcomb told him that bonding was a requirement of release.

Garner filed this action on October 25, 1993, alleging claims for conversion, based on the disposal of his truck, and for violation of his due process rights, based on the State's refusal to grant him a hearing pursuant to RCW 46.12.330. The State eventually moved for summary judgment. By amended order filed April 25, 1995, the trial court granted the State's motion and dismissed Garner's claims.

In its order, the trial court concluded that Garner had failed to establish conversion as a matter of law because he had failed to take advantage of the opportunity to claim his truck, either with or without licensing it. The trial court also concluded that the statute of limitations has expired on Garner's due process claim and that Garner had failed to exhaust his administrative remedies. The court expressly rejected the State's contentions that it was immune from suit pursuant to RCW 46.01.310 and that the statute of limitations had expired on Garner's conversion claim. Garner's motion for reconsideration was denied on

May 5, 1995.

In reviewing an order of summary judgment, an appellate court undertakes the same inquiry as the trial court and determines whether the materials, viewed in the light most favorable to the nonmoving party, demonstrate "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); ***Hartley v. State***, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). The moving party can meet its initial burden on summary judgment "by showing that there is an absence of evidence supporting the nonmoving party's case." ***White v. Kent Med. Ctr., Inc., P.S.***, 61 Wn. App. 163, 170, 810 P.2d 4 (1991). The burden then shifts to the nonmoving party to set forth specific facts demonstrating a genuine issue for trial; summary judgment should be entered if the nonmoving party "fails to establish the existence of an element essential to that party's case." ***Kendal v. Public Hosp. Dist. No. 6***, 118 Wn.2d 1, 9, 820 P.2d 497 (1991).

Conversion is the unjustified, willful interference with a chattel that deprives a person entitled to the property of possession. ***Meyers Way Development, Ltd. Partnership v. University Savings Bank***, ____ Wn. App. ____, ____ P.2d ____ (No. 33425-5-I, February 20, 1996), 1996 WL 70282, at 60. Garner does not dispute the propriety of the initial seizure of his truck for purposes of investigation. Nor does he dispute the fact that he was free to take possession of this truck, either by retrieving it, without title or registration, or by posting a bond in order to obtain title and registration. Rather, he contends that the trial court erroneously entered summary judgment because the

reasonableness of his actions in not picking up the truck depended on disputed issues of fact. He further maintains that the State's disposal of his vehicle was not lawful because it was done without the notice and hearing to which he was entitled. These contentions are not persuasive.

Garner maintains that he was reasonable in not picking up the truck because the WSP had initially informed him that is was stolen or might have been stolen and he was afraid if he took possession, he could be charged with a crime. See RCW 46.12.300. He further contends that the disputed issue of whether he was unambiguously informed that a bond was not required for release of the truck is also relevant to the reasonableness of his actions in not picking up his truck, when he was free to do so, is relevant to a claim for conversion. Consequently, although the reasonableness of his actions may be disputed factual issue, it is not material.

The crux of Garner's argument on appeal is that he was entitled to a hearing before the disposal of his vehicle could be lawful. RCW 46.12.310(2) provides that within 5 days of the seizure of a vehicle for further investigation, the seizing agency shall notify all persons claiming an interest in the vehicle of, among other things, "the fact of seizure, the possible disposition[,] and the right of the person to request a hearing to establish a claim of ownership." It is undisputed that the WSP never provided

such notice.[3] It is also undisputed that Garner repeatedly requested a hearing to establish ownership beginning on October 12, 1989. Finally, it is undisputed that Garner was informed on December 7, 1989, that "[t]hat RCW has no provision for a hearing," and on January 10, 1990, that "there is no requirement for a hearing."

RCW 46.12.330 provides in pertinent part:

> (1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle . . . seized pursuant to this section.
>
> (2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge . . .
>
> (3) Such hearing shall be held within a reasonable time after receipt of a request therefore. Reasonable investigative activities, including efforts to establish the identify of the article . . . and the identity of the person entitled to the lawful possession or custody of the article . . . shall be considered in determining the reasonableness of the time within which a hearing must be held.

Garner claims he was entitled to a hearing under RCW 46.12.330 "to clear up the issue whether or not the vehicle was stolen and obtain an order stating that the vehicle was

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[3] The State asserts that the notice required by RCW 46.12.310(2) applies "only to persons other than from whom the vehicle was originally seized." This argument is not supported by the plain language of the statute.

not stolen before he took possession." Brief of App., at 16. Garner also maintains that he was entitled to a copy of the WSP investigation report on his vehicle.

Garner's contention that he was entitled to the hearing contemplated by RCW 46.12.330(1) obscures the fact that no later than February 14, 1990, when Garner was informed that he could claim his truck, either with or without registration, there was no longer any dispute over ownership or right to lawful possession. Garner was completely free to regain possession of the vehicle in the same condition in which it had been seized. Consequently, the hearing contemplated by RCW 46.12.330(1) was superfluous.

Garner appears to contend that having seized his truck for further investigation and suggested that it might have been stolen, the WSP placed a "cloud" on its title. Essentially, Garner maintains that the WSP was legally obligated to provide him with some clarification of the vehicle's status before he had any duty to reclaim his truck. Because the WSP never provided such clarification by means of a hearing, Garner maintains, its subsequent disposal of the vehicle was unlawful and therefore constituted conversion. Garner fails to cite any authority suggesting that such a duty arises when a vehicle is seized further investigation pursuant RCW 46.12.310(1) or that a hearing pursuant to RCW 46.12.330(1) is required when there is only one claimant and no dispute over ownership or right to lawful possession of the seized vehicle.

In summary, Garner has failed to identify any genuine issue of material fact as to whether the disposal of

his vehicle was lawful. Accordingly, the trial court property entered summary judgment on Garner's claim for conversion.

Garner's second claim was based on an alleged due process violation arising from the State's refusal to grant a hearing pursuant to RCW 46.12.330. Although the precise nature of this claim is not clear, there is no dispute that it is subject to a 3-year statute of limitations. See RCW 4.16.080(2). The trial court concluded that the claim was barred by the statute of limitations.

Garner concedes that he was denied a hearing no later than February 14, 1990, more than three years before he filed this action. He seems to argue, however, that this was the denial of a "first" hearing and that he was also denied a "second" hearing, a denial that did not occur until sometime later, within the 3-year period.

Garner's reliance for this proposition on RCW 46.12.320, which, under certain circumstances, governs the disposition of vehicles seized pursuant RCW 46.12.310(1), is misplaced. RCW 46.12.320 refers only to the hearing authorized by RCW 46.12.330; it does not create the right to a separate, second hearing.

Garner also argues there is a factual dispute as to when this due process claim accrued because it is unclear when the WSP completed its investigation of the truck. Garner points to Chip Holcomb's letter of October 11, 1991, as the first evidence that the WSP had completed its report. However, the State had informed Garner and he was aware no later than February 14, 1990, that there

would be no hearing. The date on which the WSP actually completed its investigation was not relevant to his claim that he was denied a hearing pursuant to RCW 46.12.330. There is no genuine factual dispute that Garner knew or reasonably should have known of all the essential elements of his due process claim, based on the State's failure to grant him a hearing, more than 3 years before filing suit. The trial court therefore properly concluded that Garner's due process claim was barred by the statute of limitations.[4]

Garner's final contention is that summary judgment was erroneously entered because the State committed discovery violations. He asserts that the State's answers to his interrogatories were not received until 2 weeks after the summary judgment hearing and that they were generally incomplete and unresponsive. He suggests that the late discovery prevented him from responding adequately to the State's summary judgment motion.

As the Sate correctly notes, this issue was first raised in Garner's motion for reconsideration. Prior to entry of the summary judgment order, Garner did not move for the continuance authorized by CR 56(f) if the nonmoving party has not had an opportunity to make full discovery. Garner's failure to move for a continuance precludes consideration of this issue on appeal in the context of his challenge to the summary judgment. ***Guile v. Ballard Community Hosp.***, 70 Wn. App. 18, 24–25, 851 P.2d 689, ***review denied***, 122 Wn.2d 1010 (1993).

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[4] The trial court also ruled that Garner had failed to exhaust his administrative remedies in conjunction with his due process claim. Because Garner's claim was barred by the statute of limitations, we do not reach the exhaustion issue.

Moreover, given Garner's failure to move for a continuance prior to entry of the summary judgment order, it cannot be said that the trial court abused its discretion in denying his motion for reconsideration based on the alleged discovery violation. See ***Kleyer v. Harborview Med. Ctr.***, 76 Wn. App. 541, 545 887 P.2d 468 (1995).

In its brief, the State argues that the statute of limitations had expired on all of Garner's claims, including his claim for conversion, and that the State is immune from suite on Garner's claims under RCW 46.01.310. In its summary judgment order, the trial court expressly rejected these contentions. Because the State has failed to cross-appeal the trial court's ruling, we decline to consider these arguments. See ***Tellevik v. Real Property Knows as 31641 West Rutherford Street***, 120 Wn.2d 68, 89, 838 P.2d 111, 845 P.2d 1325 (1992).

Judgment affirmed.

ITEM 9

THE SUPREME COURT OF WASHINGTON

CHARLES R. GARNER,	)	
	)	
Petitioner,	)	NO. 64036-0
	)	
v.	)	**ORDER**
	)	
STATE OF WASHINGTON,	)	C/A NO. 3661-1-I
	)	
Respondent.	)	
	)	

All five members of Department II of the Court considered the matters set on its September 3, 1996, Motion Calendar, and unanimously agreed that the following order be entered. Therefore, Chief Justice Barbara Durham directed that this order be entered:

IT IS ORDERED:

The Petition for Review is denied.

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BY C. J. MERRITT
CLERK

I CERTIFY THAT THIS ORDER WAS ENTERED BY THE COURT ON THIS 3RD DAY OF SEPTEMBER, 1996.

/s/ C. J. MERRITT
C. J. MERRITT, CLERK